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09/840,548	04/23/2001	Doug Rollins	MTIPAT.191A	3928
20995 7590 08/20/2008 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER BURLESON, MICHAEL L.				
ART UNIT		PAPER NUMBER		
2625				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

09/840,548

Applicant(s)

ROLLINS, DOUG

Examiner

MICHAEL BURLESON

Art Unit

2625

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-9,11,13-16 and 21-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-9,11,13-16 and 21-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-884)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date 04/17/08.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 06/27/2008 have been fully considered but they are not persuasive.
2. Applicant states that the reference McHale does not teach of applying a wait time when a modem is active. Examiner disagrees with Applicant. McHale states that processor (116) may send acknowledgement information to modem 30 that includes an indication that a modem **is** or is not available, an identification of the available modem, a time interval before modem (30) should attempt communication with the selected modem in modem pool (74) (column 10, lines 26-32). This reads on applying a wait time when a modem is active.
3. Claims 1-3,5-9,11,13-16 and 21-28 are rejected.

Information Disclosure Statement

4. The information disclosure statement (IDS) submitted on 04/17/2008. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

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art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claim1-3,5-9,11,13-16 and 21-28 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant has amended claims 1,13,21 and 25 to read determining whether the outgoing dial-up modems are active and applying a variable wait time when the outgoing dial-up modems are active. Pages 7-8 of Applicant's specification talks of determining if the modem is inactive and then applying a wait time to that modem. Examiner cannot find any disclosure in Applicant's specification teaching of determining if a modem in active and applying a wait time.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3,5-9,11,13-16 and 21-28 rejected under 35 U.S.C. 103(a) as being unpatentable over McHale US 5668857 in view of Hiatt US 6795408.

3. Regarding claim 1, McHale teaches a method of communicating a message via a computer network (column 3, lines 12-18). McHale teaches of transmitting a message from a first server to a target transceiver via a second server wherein the second server comprises a plurality of outgoing dial-up modems and wherein the outgoing dial-up modems are configured to fax the message to recipients via a public switched telephone network wherein the second server is selected such that the target transceiver and the second server are located within a same local-toll area of the public switched telephone (column 3, lines 54-61, column 4, lines 26-36 and column 10, lines 23-25). McHale teaches determining with a processor availability of the outgoing dial-up modems at the second server by determining whether the outgoing dial-up modems are active (column 10, lines 11-21 and 26-32). McHale teaches applying a variable wait time when the outgoing dial-up modems are active, wherein a duration of the variable wait time is applied based at least in part on historical data and based at least in part on the utilization of the outgoing dial-up modems (column 10, lines 26-36). McHale teaches after the variable wait time, determining with a processor the availability of the outgoing dial-up modems at the target server by determining whether the outgoing dial-up modems remain active (column 10, lines 26-32).
4. McHale teaches sending a message if one of the outgoing dial-up modems is available and applying another variable wait time if the outgoing dial-up modems remain active (column 10, lines 25-36), but fails to teach of sending the message via an available outgoing dial-up modem and the public switched telephoned network.

5. Hiett teaches of sending the message via an available outgoing dial-up modem and the public switched telephoned network (column 3,lines 53-65 and column 5,lines 29-40).
6. Therefore it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify McHale wherein McHale's device is applied to a dial-up modem pool. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify McHale by the teaching of Hiett in order to handle voice and/or facsimile data transmission.
7. Regarding claim 2, McHale teaches storing the message at the second server (column 10,lines 6-10).
8. Regarding claim 3, McHale teaches reserving an available outgoing dial-up modem for transmitting the message to the recipient (column 10,lines 22-32).
9. Regarding claim 5, McHale teaches determining availability of the outgoing dial-up modems is performed periodically at predetermined times or at start-up of the second server or after one of the outgoing dial-up modems is removed or another of the outgoing dial-up modems is added (column 11,lines 4-20).
10. Regarding claim 6, McHale teaches saving an active state of the outgoing dial-up modem in a memory (column 8,lines 48-52).
11. Regarding claim 7, McHale teaches queuing the message for sending at a later time if there is no outgoing dial-up modem available for immediate sending (column 10,lines 26-37).

12. Regarding claim 8, McHale teaches the wait time is based upon at least one characteristic of the load upon the outgoing dial-up modems (column 11, lines 4-21).

13. Regarding claim 9, McHale teaches sending a transmittal report to a transceiver having originated the message (column 10, lines 22-25).

14. Regarding claim 11, McHale teaches receiving the message, wherein receiving the message includes handling the message according to the T.37 standard (column 3, lines 45-61).

15. Regarding claim 13, the steps of method claim 1 performs all of the means of system claim 13. Thus claim 13 is rejected for the same reasons as discussed in the rejection of claim 1.

16. Regarding claim 14, the steps of method claim 2 performs all of the means of system claim 14. Thus claim 14 is rejected for the same reasons as discussed in the rejection of claim 2.

17. Regarding claim 15, the steps of method claim 3 performs all of the means of system claim 15. Thus claim 15 is rejected for the same reasons as discussed in the rejection of claim 3.

18. Regarding claim 16, the steps of method claim 7 performs all of the means of system claim 16. Thus claim 16 is rejected for the same reasons as discussed in the rejection of claim 7.

19. Regarding claim 21, McHale teaches a method of communicating a fax message via a computer network (column 3, lines 12-18). McHale teaches of transmitting a message from a first transceiver to a first server via a public switched telephone

network (column 4, lines 32-36). McHale teaches forwarding the message by the first server, via a computer network to a second server wherein the second server comprises a plurality of outgoing dial-up modems and wherein the outgoing dial-up modems are configured to fax the message to recipients via a public switched telephone network (column 3, lines 54-61, column 4, lines 26-36 and column 10, lines 23-25). McHale teaches receiving and storing the message at the second server (column 10, lines 6-10). McHale teaches determining whether the outgoing dial-up modems are active (column 10, lines 11-21 and 26-32). McHale teaches determining and applying a variable wait time when the outgoing dial-up modems are active, wherein the duration of the variable wait time is applied based at least in part on historical data and based at least in part on a number of the dial-up modems (column 10, lines 26-32 and lines 37-45). McHale teaches determining availability of each of the outgoing dial-up modems after the variable wait time (column 10, lines 26-32). McHale teaches if one of the outgoing dial-up modems is available after the variable wait time, sending the message via an available one of the outgoing dial-up modems and the public switched telephone network to a second transceiver, wherein the second transceiver is physically located in the same local-toll area of a public telephone network as the second server (column 10, lines 28-37).

20. Regarding claim 22, McHale teaches receiving and storing includes processing the message according to a store-and-forward protocol (column 10, lines 3-21).

21. Regarding claim 23, McHale teaches reserving the available outgoing dial-up modem for sending the message (column 10, lines 22-32).

22. Regarding claim 24, McHale teaches queuing the transmission of the message, wherein queuing transmission of the message includes the wait time that is based upon at least one characteristic of the load upon the outgoing dial-up modems (column 10, lines 26-37 and column 11, lines 4-21).

23. Regarding claim 25, McHale teaches a computer readable medium storing computer readable instructions that when executed by a computer perform a method of communicating a message via a computer network (column 3, lines 12-18, lines 32-35 and lines 54-61). McHale teaches of computer readable instructions configured to forward a message from a first server to a second server wherein the second server comprises a plurality of outgoing dial-up modems and wherein the outgoing dial-up modems are configured to fax the message to recipients via a public switched telephone network (column 3, lines 54-61, column 4, lines 26-36 and column 10, lines 23-25). McHale teaches instructions configured to determine availability of the outgoing dial-up modems at the second server (column 10, lines 11-21 and 26-32). McHale teaches computer readable instructions configured to apply a variable wait time when the dial-up modems are active, wherein the wait time is based at least in part on historical data and based at least in part on the utilization of the outgoing dial-up modems (column 10, lines 26-32). McHale teaches computer readable instructions configured to determine whether at least one of the outgoing dial-up modems is available after the wait time (column 10, lines 26-32).

24. McHale fails to teach of computer readable instructions configured to fax the message via an available outgoing dial-up modem and the public switched telephoned network.

25. Hiatt teaches of sending the message via an available outgoing dial-up modem and the public switched telephoned network (column 3, lines 53-65 and column 5, lines 29-40).

26. Therefore it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify McHale wherein McHale's device is applied to a dial-up modem pool. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify McHale by the teaching of Hiatt in order to handle voice and/or facsimile data transmission.

27. Regarding claim 26, McHale teaches instructions configured to receive and store the message, wherein receiving and storing the message includes processing the message according to a store-and-forward protocol (column 10, lines 3-21).

28. Regarding claim 27, McHale teaches computer readable instructions configured to reserve an available outgoing dial-up modem for transmitting the message to the recipient (column 10, lines 22-32).

29. Regarding claim 28, McHale teaches computer readable instructions configured to queue the message, wherein queuing the message comprises waiting for a predetermined period of time that is based upon at least one characteristic of the load upon the outgoing dial-up modems (column 10, lines 26-37 and column 11, lines 4-21).

Conclusion

30. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Burleson whose telephone number is 571-272-7460. The examiner can normally be reached Monday through Friday from 8:30 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Twyler Haskins can be reached on 571-272-7406.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Michael Burleson/
Patent Examiner

August 17, 2008

/Twyler L. Haskins/
Supervisory Patent Examiner, Art Unit 2625

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Applicant(s)/Patent under
Reexamination

ROLLINS, DOUG

Examiner

MICHAEL BURLESON

Art Unit

2625